MONTANA LEGISLATIVE HISTORY

Chapter 527 ~~19~~ 2001

Bill H 543 S _____ Original bill & history ✓ C

H. Committee on Nat. Res.			S. Committee on Nat. Res.		
Hearing Date(s)	2-19	✓ C	Hearing Date(s)	3-23	✓ C
		C		3-26	~~✓~~ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 542 Introduced by Musgrove *LC0972 Drafter: B. Campbell*

Transfer Duties for Collecting Surplus Lines Stamping Fee

By Request of State Auditor

2/10	Introduced		
2/10	Referred to Business and Labor		
2/10	Fiscal Note Requested		
2/14	Hearing		
2/14	Committee Executive Action--Bill Passed	19	0
2/14	Committee Report--Bill Passed		
2/15	Fiscal Note Received		
2/17	Fiscal Note Printed		
2/20	2nd Reading Passed	99	0
2/21	3rd Reading Passed	100	0
	Transmitted to Senate		
2/28	Referred to Business and Labor		
3/15	Hearing		
3/15	Committee Executive Action--Bill Concurred	9	0
3/15	Committee Report--Bill Concurred		
3/17	2nd Reading Concurred on Voice Vote	44	0
3/19	3rd Reading Concurred	48	1
	Returned to House		
3/20	Sent to Enrolling		
3/20	Returned from Enrolling		
3/27	Signed by Speaker		
3/27	Signed by President		
3/28	Transmitted to Governor		
4/03	Signed by Governor		
4/03	Chapter Number Assigned		
	Chapter Number 184		
	Effective Date: 10/01/2001 - All Sections		

HB 543 Introduced by R. Brown, et al. *LC1578 Drafter: Vandenbosch*

Revise Subdivision and Growth Policy Laws

2/10	Introduced		
2/10	Referred to Natural Resources		
2/19	Hearing		
2/19	Committee Executive Action--Bill Passed as Amended	19	1
2/20	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed	95	3
2/23	3rd Reading Passed	92	7
	Transmitted to Senate		
3/01	Referred to Natural Resources		
3/23	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	9	0
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred on Voice Vote	46	1
3/31	3rd Reading Concurred	45	4
	Returned to House with Amendments		
4/05	Free Conference Committee Appointed		
4/05	2nd Reading Senate Amendments Not Concurred	84	14
4/09	Conference Committee Appointed		
4/09	Conference Committee Dissolved		
4/09	Free Conference Committee Appointed		

4/11	Free Conference Committee Report Received		
4/11	Free Conference Committee Report Received		
4/12	2nd Reading Free Conference Committee Report Adopted on Voice Vote	49	0
4/13	3rd Reading Free Conference Committee Report Adopted	49	0
4/18	2nd Reading Free Conference Committee Report Adopted	85	14
4/19	3rd Reading Free Conference Committee Report Adopted	93	7
4/19	Sent to Enrolling		
4/20	Returned from Enrolling		
4/20	Signed by Speaker		
4/20	Signed by President		
4/21	Transmitted to Governor		
5/01	Signed by Governor		
5/01	Chapter Number Assigned		
	Chapter Number 527		
	Effective Date: 10/01/2001 - All Sections		

HB 544 Introduced by Somerville, et al. *LC1012 Drafter: MacMaster*

Uninsured Motorist Identification Data Base

2/10	Introduced		
2/10	Referred to Transportation		
2/10	Fiscal Note Requested		
2/16	Fiscal Note Received		
2/16	Hearing		
2/17	Fiscal Note Printed		
3/03	Committee Executive Action--Bill Passed as Amended	12	6
3/03	Revised Fiscal Note Requested		
3/03	Committee Report--Bill Passed as Amended		
3/07	Revised Fiscal Note Received		
3/09	2nd Reading Passed	71	29
3/10	3rd Reading Passed	72	28
	Transmitted to Senate		
3/12	Referred to Business and Labor		
3/21	Hearing		
3/22	Tabled in Committee		
4/09	Taken from Committee; Placed on 2nd Reading	34	15
4/10	Taken from 2nd Reading; Rereferred to Business and Labor	34	13
	Died in Process		

HB 545 Introduced by Gallik *LC1097 Drafter: MacMaster*

Protect Parent's Due Process in Family Law Cases

2/10	Introduced
2/10	Referred to Judiciary
2/14	Hearing
2/14	Tabled in Committee
2/23	Missed Deadline for General Bill Transmittal

HB 546 Introduced by Gallik *LC1095 Drafter: MacMaster*

Revise Law on Modification of Child Support

2/10	Introduced
2/10	Referred to Judiciary
2/14	Hearing
2/14	Tabled in Committee
2/23	Missed Deadline for General Bill Transmittal

HOUSE BILL NO. 543

INTRODUCED BY (Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO REVIEW OF SUBDIVISIONS FOR CONFORMANCE TO LOCAL GROWTH POLICIES; ELIMINATING LOCAL GOVERNMENT AUTHORITY TO REQUIRE SUBDIVISION PLATS TO CONFORM TO GROWTH POLICIES BY ADOPTION OF AN ORDINANCE OR RESOLUTION; AMENDING SECTION 76-3-604, MCA; AND REPEALING SECTION 76-1-606, MCA."

WHEREAS, section 76-1-606, MCA, allows local governments to require subdivision plats to conform to the provisions of adopted growth policies; and

WHEREAS, section 76-3-604, MCA, has been interpreted to allow local governments to deny or condition the approval of subdivision plats based on the growth policy; and

WHEREAS, many adopted growth policies contain ambiguous and subjective provisions that cannot be applied to subdivisions in an objective manner; and

WHEREAS, it is inconsistent with accepted precepts of planning to authorize a local government to enforce a growth policy without properly adopted land use controls; and

WHEREAS, the Legislature intends to clarify that growth policies should not be enforced and that growth policies should be implemented through the proper adoption of land use controls; and

WHEREAS, a statutory procedure is in place that allows local governments to implement growth policies through properly adopted land use controls; and

WHEREAS, this land use control adoption procedure incorporates the due process and other constitutional protections that are not included under section 76-1-606, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local growth policy if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted

pursuant to this chapter. The governing body may not deny or impose conditions on the approval of a plat based on a determination that the plat does not conform to the growth policy.

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat."

NEW SECTION. **Section 2. Repealer.** Section 76-1-606, MCA, is repealed.

- END -

29 pgs.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 19, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Rod Bitney (R)
Rep. Linda Holden (R)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 543, 2/16/2001; HB 572, 2/16/2001; HB 573, 2/16/2001;

HB 586, 2/16/2001; HJ 27, 2/16/2001
Executive Action: HB 586; HB 543; HB 459; HB 446; HB 573; HB 572; HJ 27

HEARING ON HB 543

Sponsor: REP. ROY BROWN, HD 14, Billings

Proponents: Peggy Trenk, Montana Association of Realtors
Michael Kakuk, Helena, self
Andy Skinner, Helena Property Owners Association
Collin Bangs, Montana Association of Realtors
Byron Roberts, Montana Builders Association
Ronda Carpenter, Montana Housing Providers
Joe Mueller, Helena, self
Don Allen, WETA

Opponents: Tim Davis, Montana Smart Growth Coalition
Bill Murdock, Gallatin County Commission
Bob Horne, Great Falls, Montana Association of Realtors
James Olsen, Hamilton, self
Bill Armold, Planning Department, Gallatin County
Linda Stoll, Montana Association of Planners
Julia Page, Park County, self
REP. JOAN HURDLE, HD 13, Billings
Richard Parks, Gardiner, self
Beth Kaeding, self
Mona Jamison, Gallatin County
Janet Ellis, Montana Audubon
Tom Schneider, Helena, self
Anne Hedges, MEIC

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.7}

REP. ROY BROWN, HD 14, Billings, stated HB 543 is an act revising laws related to the review of subdivisions for conformance to local growth policies. The preamble sets out the philosophical basis for the bill. Developers in Montana are increasingly frustrated by local government review and approval of subdivisions. This usually causes unpredictability and inconsistency in subdivision regulations. Many local governments try to use growth policies and master plans to regulate

subdivisions. These plans should not be used as laws for substitutes for zoning.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 3.7}

Peggy Trenk, Montana Association of Realtors, submitted written testimony **EXHIBIT(nah41a01)** and a handout on growth policy **EXHIBIT(nah41a02)**.

Michael Kakuk, Helena, self, submitted written testimony **EXHIBIT(nah41a03)** and a handout on 76-1-601, MCA **EXHIBIT(nah41a04)**.

Andy Skinner, Helena Property Owners Association, stated there is a conflict in Lewis and Clark County's growth policy. A letter from the commissioners, in the document, says it is a reference document of fact, relationship and attitudes to help in the decision making process. It is a manual and a source of information to help the county to write it's own answers. It does not establish zoning or regulations to control development. When you go into the document, in policy 5.1 the statement is, "Prohibit construction activities within delineated wetlands." That means that any property established as wetlands cannot be developed. That is unconstitutional. He then read from the subdivision regulations for Lewis and Clark County. There is contradiction between the two documents. This bill will clear up the confusion. He asked for a do pass.

Collin Bangs, Montana Association of Realtors, submitted written testimony from Bryce E. Bondurant **EXHIBIT(nah41a05)**.

Byron Roberts, Montana Builders Association, stated, a growth policy or comprehensive plan is not a regulatory document. It is an advisory document. He asked for a do pass.

Ronda Carpenter, Montana Housing Providers, stated, a number of her members are attempting to develop affordable multi-family housing. She asked for a do pass.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 23.2}

Tim Davis, Montana Smart Growth Coalition, stated, good planing has many benefits. However, most of those benefits are not

realized if the plan is not implemented. HB 543 seeks to insure that growth policies do not get implemented. It violates the trust that local residents place in their local planning process. Why would you create a growth policy if you weren't going to control subdivisions? You wouldn't. If you can't guide growth in subdivisions with your growth policy then there is no purpose to having one. He offered an amendment, instead of exempting subdivisions from complying with a growth policy you should require the local government pass regulations and ordinances that implement their growth policies within two years of adopting the policy. He strongly opposes HB 543 without that amendment.

Bill Murdock, Gallatin County Commissioner, stated, Gallatin County likes growth policies. Having growth policies for subdivisions to conform with is good planning. It allows the communities to manage growth. It is an option to the communities that should not be taken away. He urged the committee to oppose the bill.

Bob Horne, Planning Director, Great Falls, submitted written testimony **EXHIBIT(nah41a06)**.

James Olsen, Hamilton, self, stated he agrees with private property rights and due process. The neighbors of subdivisions property rights are often violated. A plan, if adopted, needs to be implemented. There are good plans and bad plans. A good plan should be an enforcement document. HB 543 is about local control. It needs to be modified so that these counties with growth policies are protected. The state should not dictate what the local government can and cannot do.

Bill Armold, Planning Department, Gallatin County, submitted written testimony **EXHIBIT(nah41a07)**.

Linda Stoll, Montana Association of Planners, stated, the Department of Commerce has indicated that there are currently no SB 97 compliance growth policies in effect. There are however a number of communities who are midway or towards the end in the process. SB 97 was approved by the legislature two years ago and the communities should be given an opportunity to use that legislation.

Julia Page, Park County, self, stated, she spent three years working on the Park County Comprehensive Plan and this bill is a slap in the face. The understanding was that the plan would help guide development in the county. A well planned development

saves counties money in terms of having appropriately sized and placed infrastructure. She is strongly opposed to HB 543.

REP. JOAN HURDLE, HD 13, Billings, stated, this is one of the most hypocritical and cynical bills this session. The developers may be tired of being denied their subdivisions but the taxpayers are tired of being denied their rights. Downtowns deteriorate in direct proportion to the amount of sprawl that is permitted.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 46.7}

REP. HARRIS asked **Mr. Murdock** what would this bill do to Gallatin County's plan? **Mr. Murdock** stated, this would be put to the vote of the people of Gallatin County. **REP. HARRIS** asked, so if this bill were to pass what would Gallatin County have to do? **Mr. Murdock** stated, if this happens there will not be a connection between subdivisions in the future in the growth policy. The people could vote on it but the county couldn't require a compliance. **REP. HARRIS** asked, then the vote would be a nullity because of this bill? **Mr. Murdock** stated yes.

REP. ERICKSON asked **Mr. Kakuk**, what his response would be to the county-wide zoning being politically impossible. **Mr. Kakuk** stated, county-wide zoning is one method of subdivision regulation. Some other ways are citizen initiated zoning or duly adopted subdivision regulations. Nothing in HB 543 changes any of those authorities to adopt subdivision regulations, citizen initiated zoning or county-wide zoning. **REP. ERICKSON** asked, regarding page 1304 in the growth policy law, is what you want to happen already in current law? **Mr. Kakuk** stated that is correct. He talked about an amendment that says that the subdivision regulations must be made in accordance with the growth policy if there is one. There is no disconnect that occurs between subdivision regulations and growth policies due to HB 543. It says, do not enforce a growth policy, implement it. **REP. ERICKSON** asked, regarding **Mr. Horne's** amendments, do you think that is a reasonable idea? **Mr. Kakuk** stated, this amendment would take it one step further and say that you have to adopt this as a regulation. That means that there is going to be some public participation in the process. It does not go far enough but it is an improvement. **REP. ERICKSON** asked, then do you agree that this would do what it is that the sponsor has asked for in the first place in terms of the sense of what needs to be done with growth management plans? **Mr. Kakuk** stated, no it doesn't. It's an improvement but now you have a subdivision regulation

EXHIBIT 1
DATE 2-19-01
HB 543

Comments on HB 543:

Madame Chairman, Members of the Committee, for the record my name is Peggy Trenk. I am here today representing the 3,000 members of the Montana Association of Realtors in support of HB 543.

Our members support the development and adoption of local growth policies. We have come to appreciate that good planning helps maintain our community quality of life, and is important in promoting economic development. We have initiated efforts both internally, and in concert with other organizations to teach our members about how to get involved in the planning process, and what the tools are that can be used to translate policy into actions on the ground.

This month our members have been part of a series of public workshops held in larger communities around the state to raise the awareness of growth planning and encourage participation locally.

I want to make that point because I want the Committee to be clear that this bill is not intended, in any way, to discourage communities from developing and utilizing growth policies. In fact, our hope is that it will make development of growth policies less contentious, and perhaps less expensive, as well as reduce the potential for litigation.

Our members, as well as others, have raised the question about the whether or not the growth policy is a regulatory document before. In discussions with other participants in the Montana Growth Forum, I've learned it continues to be raised, but not resolved through litigation. That uncertainty is evidenced in some of the controversy over growth policies as folks struggle to figure out what the goals will translate into on the ground.

The answer is not clear. And in regulatory matters, where people are prepared to make a substantial investment, including that needed to provide more affordable housing, you need predictability and clarity. That, in essence, is the reason for this bill. HB 543 answers the question – growth policies ARE NOT regulatory documents.

And they shouldn't be. The policy establishes a vision for the community – and sets the direction for how we want to grow. It is a critical element in building the framework for duly adopted regulations that follow. But it does not offer the kind of specificity or due process protections that are necessary to regulate activities on the ground. Let me give you an example of language from the draft West Billings Plan currently being developed:

One of the issues raised in the concern about aesthetics. On page 26 of the draft, it says "the loss of community character....should be mitigated and controlled." On page 29, it says that design of subdivisions must be "sensitive to

the preservation of significant vistas of community-wide value and community cultural and environmental resources". If the process stops with the adoption of that policy, how is anyone to know how that language is going to apply to his project – how is he going to know what is expected of him, on the ground? Yet, given the lack of clarity about the role of the policy, he could be held to that as a condition of his subdivision approval – or it could be denied altogether.

We all need more.

Local governments need to update and revise subdivision regulations, establish permit guidelines and develop zoning ordinances to bring this process together. You cannot leave the job half completed and expect to have the kind of outcome that benefits the community overall. In fact, throughout the draft West Billings plan, as implementation strategies are discussed, it is stated that "subdivision regulations for both the City of Billings and Yellowstone County should be reviewed and appropriately amended to be fully compatible and include specifics so that developers, etc.....can take ....needs into account when reviewing all subdivision requests. " (Page 14) The plan clearly contemplates we will realize the goals and objectives by updating our regulatory tools.

I'd like to pass around a handout that illustrates how this process does work together in a logical way, where no one element is more or less important to achieving the outcome we want, but where no one element can be left out and still ensure all interests are protected.

In sum, we fear leaving the question of the role of the plan unanswered invites the possibility that local governments won't take the next step. We know it isn't easy, and we know we are sometimes the loudest critics (and we're working on that) – but it is the best way to ensure fairness and accountability.

For that reason, we urge you to vote "Do Pass" on HB 543.

EXHIBIT 2
DATE 2-19-01
HB 543

GROWTH POLICY
(FORMERLY COMPREHENSIVE PLAN)

A document developed through a public process that identifies land use issues, establishes goals, and gives direction for dealing with those issues.

Developed through information gathering and community involvement, including one mandatory public hearing.

Once adopted, it does not provide a process for appealing a land use decision based on a determination that it does or does not comply with the Growth Policy.

LAND USE REGULATIONS

Carry out the direction set forth in the Growth Policy by articulating specific requirements that govern the use of land, and provide due process protections in the development, adoption, implementation and appeal processes.

SUBDIVISION REGULATIONS

Promote Procedural Due Process by setting out Public Notice and Hearing requirements.

Promote Substantive Due Process by assuring that land use requirements are reasonable, implement local government goals (per Growth Policy), relate to public health, safety and general welfare and will not result in a "taking" of property.

ZONING AND DEVELOPMENT PERMIT REGULATIONS

By law, must conform to the Growth Policy.

Promote Procedural Due Process by setting out Public Notice and Hearing requirements.

Promote Substantive Due Process by assuring regulations are reasonable, relate to public health and safety, and general welfare.

Must also address Equal Protection concerns and "Taking" of private property concerns.

Sources: A Handbook on Local Land Use Regulation; A Primer: Subdivision Review Under the Montana Subdivision and Platting Act; and A Primer on Land Use Planning and Regulation for Local Government. Published by the Montana Department of Commerce.

EXHIBIT 3
DATE 2-19-01
HB 543

LEGAL MEMO

TO: PEGGY TRENK, WETA
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: HB 543
DATE: FEBRUARY 18, 2001

PURPOSE AND DISCLAIMER

The memo you requested regarding HB 543 is provided below.

Please keep in mind that this memo is based on the bill as introduced and reflects my understanding of the "intent" of the bill. Additional impacts of this legislation may become evident during public testimony. Of course, any amendments to the bills may have serious implications for the accuracy of this memo.

BILL HB 543 – REP. BROWN (LC 178 – REP. BROWN)

Goal: To prohibit local governments from requiring subdivision compliance with a growth policy.

Section Analysis:

- Preamble, page 1, lines 10 through 23.

  The preamble sets forth the philosophical basis of the bill. This preamble will not be codified but will be available to courts to assist in any question of legislative intent.

- Section 1, page 2, lines 1 through 2:

  This section prohibits a local government from requiring a subdivision to comply with the terms of a growth policy. It does however, still require that a subdivision be reviewed to determine if the subdivision is in compliance or conformance with the growth policy.

- Section 2, page 2, lines 11 through __:

  This section repeals section 76-1-606 which provides statutory authority for a local government to require that a subdivision comply with a growth policy.

Arguments For:

Developers in Montana are experiencing increasing problems with local government review and approval of subdivisions. Most these problems stem from the inconsistent

and unpredictable application of local government subdivision regulations. A specific problem lies in the use of growth policies, formerly comprehensive plans, to regulate subdivisions. The result is an inefficient, ineffective, and, in my opinion, illegal regulation of land use through the planning process. In short, a plan should be implemented through duly adopted land use regulations, not enforced as a regulatory document on its own.

Some of the specific legal issues involved in this issue include:

- Allowing a local government to require "conformance" between a growth policy and a subdivision is land use regulation without the equal protection and due process protections available to the public through Montana zoning laws.
- The word "conform" is not defined in statute. Does it mean absolute symmetry between the subdivision and the growth policy or can it be read to mean general conformance to the intent of the plan?
- While the word "conform" is used in subsection (1) the local planning boards are required to evaluate the "compliance" of the subdivision with the growth policy in subsections (2) and (3). "Compliance" is not defined either but it may carry legal connotations of a stricter standard of review.
- Subsection (4) allows the actual decision regarding "compliance or non-compliance" to be made by planning staff instead of the members of the planning board.

Specific arguments in favor of HB 543 include:

1. Proper land use regulations carry with them important due process protections at four distinct stages:
    a. Public involvement at the development of the regulation;
    b. Public involvement at the adoption of the regulation;
    c. Public involvement at implementation of the regulation; and
    d. An avenue for grievances (Variance procedures etc.)

2. Growth policies are not meant to be "land use regulations" and therefore have none of the above listed protections.

3. If the growth policy is not a land use regulation then it should not be enforced as if it were.

4. Our rights to due process are violated anytime a local government attempts to enforce a growth policy.

5. Clarifying that the policy is not enforceable will simplify the policy adoption process by making the process less contentious and less expensive.

Arguments Against:

- HB 543 totally defeats the purpose of planning.

Rebuttal:

Planning remains a vital community process after HB 543. This bill does not say you can't use the plan, it only says that you can't use the plan as a regulatory document. Planning is still required because current law in Montana requires that any zoning be based on, and in conformance with, a valid plan or growth policy. You can not regulate the use of land in Montana without a valid plan or growth policy.

Additionally, the planning process has merit even if it's not implemented through land use regs. The development of a proper plan should allow the residents of that community to sit down together and to discuss what they would like the community to look like and to be like in 30 years.

Planning after HB 543 will be easier and less time consuming and costly because the citizens will understand that it will not be used as a regulatory document.

Note: Obviously Lewis and Clark County felt that there was a need for planning even if they were not going to enforce the plan. The cover page to their recently adopted policy states that the policy is not a regulatory document. (Although the language inside the policy is still regulatory in effect.)

- The development community has continually been against any form of land use controls. HB 543 takes away local government's only effective method of land use control.

Rebuttal:

The mere fact that opponents to HB 543 make this argument is ample proof that it is needed. A growth policy makes a very inefficient, and fundamentally unfair, land use regulatory tool.

Additionally, the development community has never been against properly adopted, equitable, and reasonable land use regulations. What we have been against is the usual top-down imposition of land use regulation from the government at the expense of the people's rights. The current "neighborhood plan" approach to zoning currently in the L&C Growth Policy may be a way to ensure that the land use reg's are developed and put in place by the people who live in that area.

- If a local government cannot require compliance, why review for compliance?

Rebuttal:

The bill allows the local government to review subdivision plats to determine whether the plat conforms to the plan – but it does not allow for a plat, a plat

that is otherwise in accordance with the state and local government regulations, to be denied simply because it does not conform to the growth policy. Too many subdivision plats that do not comply with the policy should act as a signal to the local government that land use controls are required in that area or that the policy needs revision.

- HB 543 is in response to small hand full of local governments that have been abusing their subdivision review authority.

  Rebuttal:
  The question of the regulatory effect of growth polices on land use decisions in general, and subdivisions decisions in particular, is a growing state-wide issue. In two recent Montana Supreme court cases, the *Town of Ennis* and *Sweet Grass County* cases, the issue of required subdivision compliance with a growth policy was raised. The Court never actually reached the specific issue in either case, but the issue will be raised again. There are currently at least two more cases involving this issue in the First Judicial District alone.

- There are already due process protections associated with the adoption of a growth policy.

  Rebuttal:

  While there is one public hearing required before a governing body may adopt a growth policy, the process does not come anywhere close to being enough to adequately involve the public to ensure that everybody's due process rights are protected. In the recent L&C hearing process, the local government continued to deny that the policy was regulatory – even to the extent that the staff included a "non-regulatory" statement at the beginning of the 500 plus page document. The fact remains that the language of the document itself requires enforcement.

- Recent changes to the growth policy statute tied the subdivision review process and the growth policy process closer together. The language in HB 543 is inconsistent with the growth policy statue.

  Rebuttal:

  Section 76-1-601, the growth policy statue, requires that each policy contain language addressing how a local government will:

  (i) define the criteria in 76-3-608(3)(a); and

  (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

  (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

  Nothing in HB 543 changes these requirements. HB 543 does not conflict with anything in the growth policy statutes.

CONCLUSION:

Consider this analogy:

The Montana Air Quality Act states in part:

> ***75-2-102. Policy and purpose.*** *(1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.*

Now imagine what would happen should a state employee go out to a factory and point at the smoke stack and say: "That smoke stack is not maintaining air quality at the greatest degree practicable - shut it down." It doesn't work that way. The air quality act cannot be enforced through its purpose section. That purpose language is implemented through the remaining 12 sections of substantive law.

Don't get me wrong, the language in the "purpose" section of the air quality act is great language. And it's important and necessary language – but it is not enforceable language.

It's the same thing with growth policies: The language in the policy that says: "We want to protect our agricultural heritage"; "We want to protect our viewsheds"; "We want to protect our rural way of life" – is good language, and it's necessary language – but it should not be language that is enforceable.

Those laudatory goals should be achieved through the proper adoption of equitable, reasonable, and enforceable land use controls.

Planning is an important and necessary step in preserving land values over the long term. However, when the local government attempts to regulate land use directly through the plan – as it does every time it requires that a subdivision "conform" or "comply" with a growth policy – it does so at the expense of its citizens' rights to due process and equal protection.

EXHIBIT 4
DATE 2-19-01
HB 543

Part 6
Growth Policy

Part Cross-References

Compliance with plan required for annexation, 7-2-4734(3).

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

Compliance required by cemetery associations, 35-20-201.

76-1-601. Growth policy — contents. (1) The planning board shall prepare and propose a growth policy for the entire jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

(2) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (2)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

(3) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(4) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 in first sentence in (1) substituted "growth policy" for "master plan"; substituted language in (2) through (4) outlining required contents of growth policy for former language that read: "(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and

service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 36, Ch. 582, L. 1999, provided that the requirements for a growth policy in 76-1-601 apply to the adoption of zoning regulations pursuant to Title 76, chapter 2, part 2 or 3, after October 1, 2001.

76-1-602. Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833; amd. Sec. 9, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 in two places in (1) substituted "growth policy" for "master plan" or "plan". Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: "A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001."

76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834; amd. Sec. 10, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 after "proposed" substituted "growth policy" for "master plan". Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: "A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001."

76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed growth policy or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed growth policy or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area covered by the proposed growth policy at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a growth policy under this section.

(4) The qualified electors of the jurisdictional area included within the growth policy may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a growth policy under this section.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995; amd. Sec. 11, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 throughout section substituted "growth policy" for "master plan" or "plan"; and made minor changes in style. Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: "A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001."

76-1-605. Use of adopted growth policy. After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls; and

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 in two places in introduction substituted "growth policy" for "master plan"; and made minor changes in style. Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: "A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001."

76-1-606. Effect of growth policy on subdivisions and plats. (1) When a growth policy has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the growth policy. Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by the growth policy may not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the growth policy. The city council has the final authority to approve the filing of a plat within the city limits.

(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1), a plat involving lands outside the corporate limits of the city and covered by a growth policy may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the growth policy. The board of county commissioners has the final authority to approve the filing of the plat.

(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).

(5) This section may not be interpreted to limit the present powers of city or county governments.

(6) The requirements of this section must be met before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842; amd. Sec. 13, Ch. 582, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 582 throughout section substituted "growth policy" for "master plan"; inserted (4) allowing planning board to delegate reporting responsibility to staff; and made minor changes in style. Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: "A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001."

CHAPTER 2

PLANNING AND ZONING

Part 1 — County Planning and Zoning Commission

76-2-101. Planning and zoning commission and district.
76-2-102. Organization and operation of commission.
76-2-103. Powers of commission and employees.
76-2-104. Development pattern.
76-2-105. Continuation of prior nonconforming uses.
76-2-106. Adoption of development district.
76-2-107. Preparation of resolutions and other materials.
76-2-108. Permits authorized.
76-2-109. Effect on natural resources.
76-2-110. Appeal procedure.
76-2-111. Cooperation by public agencies with commission.
76-2-112. Effect on powers of incorporated communities to plan adjacent areas.

Part 2 — County Zoning

76-2-201. County zoning authorized.
76-2-202. Establishment of zoning districts — regulations.

EXHIBIT 5
DATE 2-19-01
HB 543

COLDWELL BANKER
STEINBRENNER
REAL ESTATE, INC.

HOLIDAY VILLAGE PROFESSIONAL PLAZA
1900 BROOKS, SUITE 113
MISSOULA, MT 59801
BUS. (406) 728-9410
FAX (406) 728-9479

Date: February 13, 2001

To Whom it May Concern:

Re: Comprehensive Plan used as zoning

From: Bryce E. Bondurant, Broker/Owner
Coldwell Banker Steinbrenner Real Estate, Inc and agent for
Butler Creek Ranch Partnership, 1992 – Present

Subject Property: "Dodd Ranch" in Sections 17, 18, & 20
T14N, R19W, PMM, Missoula County, MT

Acquired: Fall 1992 by Butler Creek Ranch Partnership

Developed: Spring 1993 into 32 parcels by Certificate of Survey #4198, Missoula County, MT.
825 Acres ÷ 32 parcels – 25.78 acres average tract size. No tracts were under 20 acres. Very lengthy restrictive covenants were recorded n 1993 giving direction to building and uses.

Determination: March 1995, a request by Ted and Susan Hall for a building permit for a 20 acre parcel (Tract 5 C.O.S. #4198) was denied by the Director of the Office of Community Development. The OCD determined that the building request was not in compliance with the Butler Creek Area Comprehensive Plan Amendment 1994 (C.O.S. filed 1993) nor the provisions of Missoula County Resolution 85-082.

Results: The developers were required to undergo a defacto subdivision and platting procedure which took 2 years and $40,000 plus of costs. The Butler Creek Area Comprehensive Plan Amendment 1996 was signed by the County Commissioners on 3/24/1997.

Sixteen of the tracts had been sold prior to the March 1995 determination. These purchasers became victims of the county's determination and lost their rights to build during the re-subdivision proceedings.

The development as approved by the Missoula County Commissioners in 1993 met local and state statutes and regulations in effect at that time.

The Comprehensive Plan was used as a zoning tool to deny a building permit and to require a lengthy and costly procedure.

Thank you for your time in considering this example.

Sincerely,

Bruce E. Bondurant
Broker-Owner

EXHIBIT 16
DATE 2-19-01
HB 543

Montana Association of Planners
c/o Butte Silverbow County Planning
Courthouse Building
155 w. Granite Street
Butte, MT 59701

Representative Cindy Younkin
Chair, House Natural Resources Committee
Montana House of Representatives
State Capitol
Helena, Montana

February 18, 2001

Via electronic mail

Re: HB 543

Dear Rep. Younkin and Members of the Committee:

It is my understanding that this bill was introduced as a result of local governments denying subdivision plats on the grounds the proposed plat does not conform to the local growth policy. I further understand that some local governments may have denied plats without amending their local regulations to state that compliance with the growth policy is one criterion (perhaps of many, depending on unique local circumstances and conditions) for subdivision approval. This practice has apparently resulted in "surprise" denials by the governing body when all local standards have been met, but the governing body falls back on some goals or policies in the growth policy that the subdivider never knew he would be required to show compliance with.

I respectfully suggest to you and the Committee that HB 543 is the wrong approach to solving this problem. This bill has two basic consequences that will be detrimental to planned community growth and good decision making. First, it would prohibit local governments from implementing the growth policy through subdivision regulations. For local governments, subdivision regulations, along with different forms of zoning, capital improvement programming, and incentive programs, are one of the most effective ways of implementing public policy. Second, it will tend to discourage local governments from formulating and adopting growth policies. If growth policy implementation is actually hindered by state law, why spend the time and resources to prepare one?

A better solution would be to require local governments that choose to implement their growth policies through subdivision regulations to amend their local regulations to include growth policy compliance as a grounds for approval, and even list ways through which the subdivider may demonstrate compliance. It is in that spirit that the Montana Association of Planners (MAP) offers the following amendments to HB 543:

The proposed additional language in 76-3-604 is amended to read (new language in caps): The governing body may not deny or impose conditions on the approval of a plat based SOLEY on a determination that the plat does not conform to the growth policy UNLESS THE LOCAL SUBDIVISION REGULATIONS INCLUDE COMPLIANCE WITH THE ADOPTED GROWTH POLICY AS GROUNDS FOR APPROVAL OF THE PLAT.

Rather than repeal Section 76-1-606, amend it as follows:

76-1-606. Effect of growth policy on subdivisions and plats. (1) When a growth policy has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the growth policy~~. Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county.~~ provided the local subdivision regulations are amended to include compliance with the growth policy as grounds for plat approval. The regulations must also demonstrate means by which the subdivider may show compliance with the growth policy.

This proposed amendment to 76-1-606 will encourage subdividers to submit data, reports, and/or analyses to demonstrate that their subdivisions comply with the local growth policy. MAP hopes you will consider these amendments in the spirit in which they are offered, and that is to **encourage** rather than discourage community based planning and growth that is consistent with those plans. Thank you for your consideration.

Respectfully,

Robert Horne, Jr. AICP
Chair, MAP Legislative Committee

GALLATIN COUNTY

311 West Main, Rm. 306 • Bozeman, MT 59715

County Commission

William A. Murdock
Jennifer Smith Mitchell
John Vincent

Phone (406) 582-3000
FAX (406) 582-3003

February 16, 2001

EXHIBIT 7
DATE 2-19-01
HB 543

Montana House of Representatives
Natural Resources Committee

Dear Representative Younkin and Committee Members:

We are writing in opposition to House Bill #543. As County Commissioners for the 4th fastest growing county in Montana, we are very concerned with the impact that this bill would have on our ability to effectively plan for our future. In short, House Bill #543 would negate all of the hard work and cooperation that was exercised in the 1999 Legislature to pass Senate Bill #97 establishing growth policies.

That bill was passed in a resounding manner, and with a strong bipartisan effort. Since the passage of SB #97, we have diligently been preparing a growth policy to better plan for the future of Gallatin County, and to comply with the new legislation. In fact, we are holding three (3) open house meetings the first week of March to receive input and ideas on our draft growth policy prior to holding hearings for adoption. We know that many counties from across the state have also been undertaking the long and sometimes difficult process of preparing growth policies.

Countless hours of discussion have taken place around Gallatin County to solicit input from the citizens that will benefit from having a sound growth policy. Our draft growth policy therefore reflects the goals and values of the residents of Gallatin County. We have taken great strides to ensure that it is predictable, that it provides incentives for property owners, and that it is respectful of individual property rights. Again, House Bill #543 would effectively negate all of that hard work.

We feel that the current growth policy language represents a sound piece of legislation which allows us the best opportunity to manage growth with a minimum of regulations. Additionally, we think that the connection between growth policies and subdivision regulations is critical in terms of assisting us in managing growth so that it occurs in a manner that benefits the taxpayers of Gallatin County.

We want the ability to direct growth in such a way that services and infrastructure can be provided in the most cost-effective manner possible. This will also help us to further other county-wide goals such as affordable housing for our citizens. At the same time, we will be better able to conserve some of our best resources including the agricultural heritage that is so important to all Montanans, along with our valuable stream and river corridors and important wildlife habitat areas. If you take this ability away from us, you will be forcing Gallatin and other high-growth counties to look at county-wide zoning as a tool to achieve our long-range goals, and that approach has historically been unacceptable to most Montana counties.

In closing, we would like to thank you for your efforts on behalf of Gallatin County and all of Montana. Your decisions will help us to preserve Montana as truly the "last best place".

Respectfully,

Board of Gallatin County Commissioners

Jennifer Smith Mitchell, Chair

Bill Murdock, Commissioner

John Vincent, Commissioner

EXHIBIT 8
DATE 2-19-01
HB 543

PROPOSED CONCEPTUAL AMENDMENT TO HB 543

1. Amend title in accordance with below amendment.

2. **Section 2.** Section 76-3-501, MCA is amended to read:

76-3-501. Local subdivision regulations. (1) ~~Before July 1, 1974, the~~ The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations under this part. The subdivision regulations must be made in accordance with the growth policy, if any, and reasonably ~~providing~~ provide for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

3. Renumber subsequent section.

that doesn't preserve agriculture. Subdivisions are being denied based on language like it does not preserve agriculture. **REP. ERICKSON** asked, doesn't this amendment say they can't deny on the basis of the growth policy? They must be able to go ahead and get subdivision regulations and use them. Those subdivision regulations would have had to gone through a public hearing. Isn't that right? **Mr. Kakuk** stated, in his opinion that is not what the amendment says. **REP. ERICKSON** asked **Mr. Kakuk** if he would be willing to sit down with **Mr. Horne** to work this out. **Mr. Kakuk** stated yes.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 57.2}

REP. BROWN stated, most of the opponents actually made his point. They say that they can't do what they want to do through the growth plan or through zoning so they would like to use the growth plan to do that. That is how this problem came about. This bill favors implementation of the growth policy but it prohibits enforcement. Using growth policies to do zoning is not appropriate. The growth policy and zoning need to be looked at hand in hand, they are not separated in this. People who live in subdivisions are taxpayers and have a problem when they have due process and equal protection problems. He passed out a proposed conceptual amendment **EXHIBIT(nah41a08)**. Planning and zoning is very important. When local governments try to zone by using a plan they do so at the expense of citizen's rights. He asked for a do pass.

HEARING ON HB 572, HB 573 & HJ 27

Sponsor: **REP. KEITH BALES, HD 1, Otter**

Proponents:

HB 572

Sarah Carlson, Montana Association of Conservation Districts
Mike Murphy, MWRA
Rebecca W. Watson, Redstone Gas
Lorna Karn, Montana Farm Bureau
Willie Duffield, Montana Association of Oil, Gas & Coal Counties
Don McDowell, Powder River Co.
Jim Mockler, Montana Coal Council
Carol Lambert, Women Involved In Farm Economics (WIFE)
Tom Daubert, Montana Association of Oil, Gas & Coal Counties

Motion/Vote: **REP. WANZENRIED** moved that **AMENDMENT HB058601.ate BE ADOPTED. Motion carried unanimously.**

Motion: **REP. WANZENRIED** moved that **AMENDMENT HB058601.agp BE ADOPTED.**

Discussion:

REP. ERICKSON asked for a better explanation of the amendment.

Patrick Asry, Montana Power, explained the amendment.

REP. ERICKSON asked, would a reasonable basis be a prorated basis? **Mr. Asry** stated yes.

Vote: Motion that **AMENDMENT HB58601.agp BE ADOPTED carried unanimously.**

Motion/Vote: **REP. WANZENRIED** moved that **HB 586 DO PASS AS AMENDED(2). Motion carried unanimously.**

EXECUTIVE ACTION ON HB 543

{Tape : 2; Side : B; Approx. Time Counter : 42.5}

Motion: **REP. DALE** moved that **HB 543 DO PASS.**

Motion: **REP. ERICKSON** moved that **AMENDMENT BY ROBERT HORNE BE ADOPTED.**

Discussion:

REP. ERICKSON explained the amendment. He made some changes to the amendment also. He stated that the idea behind the bill is a good one. The amendments assure that the cities, counties and subdividers do their work and get subdivision regulations that tie to the growth policy.

REP. STORY discussed 76-1-601, page 1, line f, which talks about implementation strategy. He stated that he does not think **REP. ERICKSON** has the best terminology in his amendment.

REP. ERICKSON stated that he is not sure that "actions" is the right word. He is concerned about page 1304 of 76-1-605 that the board is supposed to guide and give consideration to things like adoption of subdivision controls. If act is the wrong word a better word should be used.

REP. MOOD asked **REP. ERICKSON** to go over the change in the 76-1-606. **REP. ERICKSON** went over the language.

REP. YOUNKIN stated, rather than saying "actions and policies" it should say "goals and objectives" because that language is in 76-1-601(2)(a).

REP. ERICKSON stated those are good words.

REP. STORY stated that he agrees that the amendment clarifies a lot of problems. He gave an example in Sweet Grass County. The concern he has with the amendment is that it reverses about half of the intent of the bill. It may not be permissible under the title of the bill.

Mr. Mitchell stated, the first sentence of the title is fairly generic. The amendment does bring some question to the title. It would probably be ok to pass the amendment.

REP. STORY stated, the bill may need another person to carry it when it hits the floor.

REP. DALE stated he opposes the amendment on the basis that it makes the bill useless. He gave an example.

REP. CLANCY stated that by adding the section back in totally defeats the purpose of the bill and reverses it's intent.

REP. HURDLE asked, does that mean you are not serious about meeting regulations?

REP. YOUNKIN stated she missed the point of that comment.

REP. ERICKSON stated, this amendment meets the intent of all the testimony on the bill. The testimony had to do with plans not being used for the decision rather that regulations should be used. This amendment meets the original intent of the bill although it does it in a different way.

Vote: Motion that **AMENDMENT BY ROBERT HORNE BE ADOPTED failed 10-10 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, Wanzenried, and Younkin voting aye.**

REP. GUTSCHE stated that the fifth Whereas in the bill is not accurate. The bill is going the wrong way and she does not support it.

Vote: Motion that **HB 543 DO PASS failed 10-10 with Bitney, Brown, Clancy, Curtiss, Dale, Holden, Laible, Laszloffy, Mood, and Younkin voting aye.**

REP. HURDLE asked the vice-chairmen to examine the proxies.

Motion/Vote: **REP. ERICKSON** moved that **HB 543 BE TABLED. Motion failed 10-10 with Bales, Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, and Wanzenried voting aye.**

Motion: **REP. YOUNKIN** moved that **REP. ERICKSON'S PREVIOUS AMENDMENTS BE ADOPTED.**

Discussion:

REP. YOUNKIN stated, if you are going to enforce a growth policy it has to be in the law, not in the policy. That means that the county would have to pass an ordinance in their subdivision regulations to enforce whatever they need to enforce in the growth policy. If a growth policy is going to be implemented you have to have to subdivision regulations in order to do that. She likes the amendments.

{Tape : 3; Side : A; Approx. Time Counter : 0.1}

Vote: Motion that **REP. ERICKSON'S AMENDMENT BE ADOPTED carried 14-6 with Bitney, Brown, Clancy, Curtiss, Dale, and Laszloffy voting no.**

Motion/Vote: **REP. WANZENRIED** moved that **HB 543 DO PASS AS AMENDED. Motion carried 19-1 with Gutsche voting no.**

EXECUTIVE ACTION ON HB 459

{Tape : 3; Side : A; Approx. Time Counter : 1.9}

Motion: **REP. MOOD** moved that **HB 459 DO PASS.**

Motion: **REP. MOOD** moved that **AMENDMENT HB045901.ate BE ADOPTED.**

Discussion:

REP. MOOD passed out the amendments **EXHIBIT(nah41a25).**

REP. ERICKSON asked if there is a Fiscal Note on this bill. **REP. MOOD** stated no.

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Jan. 19, 2001 Bill NO. HB 543 NUMBER 1

MOTION: Amendment - Rep. Erickson

NAME	AYE	NO
RICK DALE		✓
GAIL GUTSCHE	✓	
GILDA CLANCY		✓
LARRY CYR	✓	
KEITH BALES		✓
BILL EGGERS	✓	
BRETT TRAMELLI	✓	
LINDA HOLDEN		✓
RICK LAIBLE		✓
DOUGLAS MOOD		✓
DAVID WANZENRIED	✓	
JEFF LASZLOFFY		✓
RON ERICKSON	✓	
AUBYN A. CURTISS		✓
CHRISTOPHER HARRIS	✓	
ROD BITNEY		✓
DEE BROWN		✓
JOAN HURDLE	✓	
BOB STORY	✓	
CINDY YOUNKIN	✓	
	10	10

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Feb 19, 2001 Bill NO. HB 543 NUMBER 1

MOTION: Do Pass

NAME	AYE	NO
RICK DALE	✓	
GAIL GUTSCHE		✓
GILDA CLANCY	✓	
LARRY CYR		✓
KEITH BALES		✓
BILL EGGERS		✓
BRETT TRAMELLI		✓
LINDA HOLDEN	✓	
RICK LAIBLE	✓	
DOUGLAS MOOD	✓	
DAVID WANZENRIED		✓
JEFF LASZLOFFY	✓	
RON ERICKSON		✓
AUBYN A. CURTISS	✓	
CHRISTOPHER HARRIS		✓
ROD BITNEY	✓	
DEE BROWN	✓	
JOAN HURDLE		✓
BOB STORY		✓
CINDY YOUNKIN	✓	
	10	10

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Feb 19, 2001 Bill NO. HB 543 NUMBER

MOTION: Table

NAME	AYE	NO
RICK DALE		✓
GAIL GUTSCHE	✓	
GILDA CLANCY		✓
LARRY CYR	✓	
KEITH BALES	✓	
BILL EGGERS	✓	
BRETT TRAMELLI	✓	
LINDA HOLDEN		✓
RICK LAIBLE		✓
DOUGLAS MOOD		✓
DAVID WANZENRIED	✓	
JEFF LASZLOFFY		✓
RON ERICKSON	✓	
AUBYN A. CURTISS		✓
CHRISTOPHER HARRIS	✓	
ROD BITNEY		✓
DEE BROWN		✓
JOAN HURDLE	✓	
BOB STORY	✓	
CINDY YOUNKIN		✓
	10	10

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Feb. 19, 2001 Bill NO. HB 543 NUMBER

MOTION: Reconsider Erickson's and

NAME	AYE	NO
RICK DALE		✓
GAIL GUTSCHE	✓	
GILDA CLANCY		✓
LARRY CYR	✓	
KEITH BALES	✓	
BILL EGGERS	✓	
BRETT TRAMELLI	✓	
LINDA HOLDEN	✓	
RICK LAIBLE	✓	
DOUGLAS MOOD	✓	
DAVID WANZENRIED	✓	
JEFF LASZLOFFY		✓
RON ERICKSON	✓	
AUBYN A. CURTISS		✓
CHRISTOPHER HARRIS	✓	
ROD BITNEY		✓
DEE BROWN		✓
JOAN HURDLE	✓	
BOB STORY	✓	
CINDY YOUNKIN	✓	
	14	6

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **House Bill 543** (first reading copy - white) **do pass as amended.**

Signed: *Representative Cindy Younkin, Chair*

And, that such amendments read:

1. Title, page 1, lines 7 and 8.
Following: "RESOLUTION"
Strike: remainder of line 7 through "76-1-606" on line 8
Insert: "UNLESS REQUIRED BY LOCAL SUBDIVISION REGULATIONS; ELIMINATING THE REQUIREMENT FOR FILING CERTIFIED COPIES OF ORDINANCES RELATED TO CONFORMANCE WITH A GROWTH POLICY; AMENDING SECTIONS 76-1-606 AND 76-3-604"

2. Page 1.
Following: line 25
Insert: "**Section 1.** Section 76-1-606, MCA, is amended to read:

"**76-1-606. Effect of growth policy on subdivisions and plats.** (1) When a growth policy has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the growth policy~~. Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county~~ provided that the local subdivision regulations are amended to include substantial compliance with the specific goals and objectives of the growth policy as grounds for plat approval. The regulations must also demonstrate means by which the subdivider may show compliance with the growth policy.

(2) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by the growth policy may not be filed without first presenting it to the planning board, which

Committee Vote:
Yes 19, No 1.

411500SC.hdc

shall make a report to the city council advising as to compliance or noncompliance of the plat with the growth policy. The city council has the final authority to approve the filing of a plat within the city limits.

(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1), a plat involving lands outside the corporate limits of the city and covered by a growth policy may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the growth policy. The board of county commissioners has the final authority to approve the filing of the plat.

(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).

(5) This section may not be interpreted to limit the present powers of city or county governments.

(6) The requirements of this section must be met before any plat may be filed of record or entitled to be recorded.""
Renumber: subsequent section

3. Page 2, line 2.
Following: "based"
Insert: "solely"
Following: "policy"
Insert: "unless the local subdivision regulations include substantial compliance with the adopted growth policy as grounds for approval of the plat"

4. Page 2, line 11.
Strike: section 2 in its entirety

- END -

MONTANA HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
VISITORS REGISTER

DATE Feb. 19, 2001

BILL NO. HB 543 SPONSOR(S) Rep. R. Brown

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

(P) Don Allen – Helena – WEMA
PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Julia Page	Gardiner	Self
P O I	Richard Parks	Gardiner	self
P O I	Bekki Kaeding	609 Stonegate Dr Bozeman	self
P O I	Peggy Trenk	Helena	Mt. Assn. of Realtors
P O I	ANDY SKINNER	"	MPOA
P O I	COLLIN BANGS	MISSOULA	MT. ASSN. OF REALTORS
P O I	Mona Jamison	Helena	Mullan Trail Assn.
P O I	Tim Davis	Helena	MT. SMART GROWTH COALITION
P O I	M. S. Kakuk	Helena	SWCF
P O I	Jim O'Brien	Helena	Self
P O I	Bonda Carpenter		Mt Hsng Providers
P O I	Byron Rolston	Helena	MT Building Ind Assn
P O I	Bill Nyda	Gallatin County	Gallatin Co Commission
P O I	Bill Harmon	Gallatin Co.	Gallatin Co.

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

(P)	Joe Mueller	Helena	Self
Opponent	Janet Ellis	Helena	MT Audubon
(O)	Tom Schneider	Helena	Self
(I)	Anne Hedges	Helena	MEIC

OVER

SEN. TOOLE inquired if the Office of Surface Mining had been contacted in preparation for the bill. **REP. OLSON** stated his contacts had been with the EQC.

SEN. TOOLE questioned if the state had worked out an agreement in regards to permitting coal operations. **Mr. Mockler** informed him they had. **SEN. TOOLE** wondered if the bill would jeopardize that agreement. **Mr. Mockler** told him it would not. If it did he would ask for a contingency clause.

SEN. TOOLE questioned how long it would take the Office of Surface Mining to decide if Montana was in compliance. **Mr. Padgett** declared it would take approximately six months. **SEN. TOOLE** wondered if the agreements with the state would stay in effect until the issue of compliance was decided. **Mr. Padgett** said they only recognize those who have been approved.

Closing by Sponsor:

REP. OLSON expressed his understanding for concerns raised during the hearing. He argued that the concerns are in the verbiage, nothing is substantive. He charged that the bill does not make state law less stringent than federal law. He declared that the bill equals jobs and opportunity. The Bull Mountain Mine is a good example. He charged that the economy of his community is failing. He urged the committee to pass the bill.

HEARING ON HB 543

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Proponents: **Peggy Trenk, MT Association of Relators**
Byron Roberts, MT Building Association
Linda Stoll, MT Association of Planners
Tim Davis, MT Smart Growth Coalition
Stuart Doggett, MT Manufactured Housing and RV Association
Joe Mueller, Self
Don Allen, WETA

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, stated the bill would help to attract business to the state. He stressed, enhancing the quality of life through growth. The development of a growth plan tends to be contentious, but ultimately points people in a common

direction. He pointed out the numerous lawsuits associated with this issue. He argued a growth plan is not meant to be a regulatory document. It does not offer the due process and equal protection. The bill will make it mandatory to use the growth process and keep it in line with the goals and objectives of the policy. The bill has the support and agreement of many organizations around the state.

Proponents' Testimony:

Peggy Trenk, MT Association of Relators, informed the committee that her organization requested the legislation. They were concerned with the role of the growth policy. She charged that the growth policy establishes a vision for the community but does not provide a plan of action. She stated that in Billings there are subdivision regulations that do not comply with the rules. She stated that the language provides clarity. She claimed growth policies become living documents. She argued the policy would no longer get caught in the middle. She stressed the need for due process protection. She submitted a Growth Policy plan and a bill with proposed amendments **EXHIBIT(nas66a02).**

Byron Roberts, MT Building Association, told the committee the problems builders encounter because subdivision regulations are unclear. He charged that the growth policy would establish community goals. The growth policy is not the implementation document. It is a policy guide that contains recommendations for community growth and development. The implementation of a plan or policy can only take place through zoning, subdivision or other enforceable use regulations.

Linda Stoll, MT Association of Planners, articulated their original discontent for the bill. She declared support for the bill with the proposed amendments. She stressed that a growth policy is a guide, not a regulatory document. She argued that the regulatory documents local governments use need to be consistent. Local governments lose cases because of the inner conflicts with regulatory documents.

Tim Davis, MT Smart Growth Coalition, spoke in favor of the bill as amended and submitted written testimony **EXHIBIT(nas66a03).**

Stuart Doggett, MT Manufactured Housing and RV Association, expressed his support for the bill as amended. He charged that manufactured homes are an important part of state housing. He emphasized the importance of clarifying growth policies.

Joe Mueller, representing himself, charged that common ground would be good for business. He argued words are subjective; growth policies are a moving target.

{Tape : 2; Side : A}

Don Allen, WETA, declared his support for appropriate planning in order to attract capital. A large number of WETA associations are concerned and affected by growth issues.

Questions from Committee Members and Responses:

SEN. LORENTS GROSFIELD wondered if local governments would not implement all required applicable provisions on every aspect of the growth policy, do they have to go back and amend out those sections. He further questioned how requiring a local government to establish enforceable provisions is different from making the growth policy enforceable. **Ms Trenk** told him that a policy is a guide, zoning laws have a process and are required to conform to the growth policy. It is important to establish regulations.

SEN. GROSFIELD questioned if the local government adopts the policy but they do not want to establish all of the requirements do they have to start over. **Ms Stoll** guessed that local governments would lose lawsuits if the language was different than the subdivision requirements. Local governments need to understand the process. **SEN. GROSFIELD** asked if the proposed language would make the growth policy more specific. **Ms Stoll** stated the intent is to make people think about what they say in the growth policy verses what is carried out in their subdivision laws. The intent is not to make the growth policy more specific.

Closing by Sponsor:

REP. BROWN declared the bill is not meant to be punitive. The bill ensures that rights are maintained when people engage in land use activities.

HEARING ON HB 340

Sponsor: **REP. CINDY YOUNKIN, HD 28, Bozeman**

Proponents: **Mike Murphy, MT Water Resources Association**
Gary Willis, MT Power Company

Motion/Vote: **SEN. MAHLUM** moved that **HB 159 BE CONCURRED IN.** **Motion carried 7-0.**

EXECUTIVE ACTION ON HB 513

(The meeting was adjourned when **Ms Vandenbosch** discussed technical concerns with HB 513 **EXHIBIT(nas66a05)**. Therefore the recorder was off and much of the discussion was missed. **SEN. COCCHIARELLA** moved the bill and the recorder was turned back on.)

{Tape : 3; Side : A}

Motion/Vote: **SEN. COCCHIARELLA** moved that **HB 513 BE TABLED.** **Motion carried 7-0.**

The following testimonies were submitted at the end of the meeting.

Janet Ellis, MT Audubon, submitted written testimony in support of HB 543 as amended **EXHIBIT(nas66a06)**.

Marga Lincoln, Representing herself, submitted written testimony in favor of HB 543 **EXHIBIT(nas66a07)**.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3/23/01
BILL NO. HB 543

GROWTH POLICY

(FORMERLY COMPREHENSIVE PLAN)

A document developed through a public process that identifies land use issues, establishes goals, and gives direction for dealing with those issues.

Developed through information gathering and community involvement, including one mandatory public hearing.

Once adopted, it does not provide a process for appealing a land use decision based on a determination that it does or does not comply with the Growth Policy.

LAND USE REGULATIONS

Carry out the direction set forth in the Growth Policy by articulating specific requirements that govern the use of land, and provide due process protections in the development, adoption, implementation and appeal processes.

SUBDIVISION REGULATIONS

Promote Procedural Due Process by setting out Public Notice and Hearing requirements.

Promote Substantive Due Process by assuring that land use requirements are reasonable, implement local government goals (per Growth Policy), relate to public health, safety and general welfare and will not result in a "taking" of property.

ZONING AND DEVELOPMENT PERMIT REGULATIONS

By law, must conform to the Growth Policy.

Promote Procedural Due Process by setting out Public Notice and Hearing requirements.

Promote Substantive Due Process by assuring regulations are reasonable, relate to public health and safety, and general welfare.

Must also address Equal Protection concerns and "Taking" of private property concerns.

Sources: A Handbook on Local Land Use Regulation; A Primer: Subdivision Review Under the Montana Subdivision and Platting Act; and A Primer on Land Use Planning and Regulation for Local Government. Published by the Montana Department of Commerce.

HOUSE BILL NO. 543

INTRODUCED BY R. BROWN, BECK, CLANCY, DALE, G. FORRESTER, KASTEN, MCNUTT, MCGEE, , D. MOOD, A. PETERSON, SLITER, WOLERY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO REVIEW OF SUBDIVISIONS FOR CONFORMANCE TO LOCAL GROWTH POLICIES; ELIMINATING LOCAL GOVERNMENT AUTHORITY TO REQUIRE SUBDIVISION PLATS TO CONFORM TO GROWTH POLICIES BY ADOPTION OF AN ORDINANCE OR RESOLUTION; ~~AMENDING SECTION 76-3-604, MCA; AND REPEALING SECTION 76-1-606~~ UNLESS REQUIRED BY LOCAL SUBDIVISION REGULATIONS; ELIMINATING THE REQUIREMENT FOR FILING CERTIFIED COPIES OF ORDINANCES RELATED TO CONFORMANCE WITH A GROWTH POLICY; AMENDING SECTIONS 76-1-606 AND 76-3-604, MCA." and providing an applicability date.

76-1-605 76-3-504

> Insert Amendment #1

WHEREAS, section 76-1-606, MCA, allows local governments to require subdivision plats to conform to the provisions of adopted growth policies; and

WHEREAS, section 76-3-604, MCA, has been interpreted to allow local governments to deny or condition the approval of subdivision plats based on the growth policy; and

WHEREAS, many adopted growth policies contain ambiguous and subjective provisions that cannot be applied to subdivisions in an objective manner; and

WHEREAS, it is inconsistent with accepted precepts of planning to authorize a local government to enforce a growth policy without properly adopted land use controls; and

WHEREAS, the Legislature intends to clarify that growth policies should ~~not be enforced and that growth policies should~~ be implemented through the proper adoption of land use controls; and

WHEREAS, a statutory procedure is in place that allows local governments to implement growth policies through properly adopted land use controls; and

WHEREAS, this land use control adoption procedure incorporates the due process and other constitutional protections that are not included under section 76-1-606, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

> Insert Amendment #4

SECTION 1. SECTION 76-1-606, MCA, IS AMENDED TO READ:

"76-1-606. Effect of growth policy on subdivisions ~~and plats~~. (1) When a growth policy has been approved, the ~~city council may by ordinance or the board of county commissioners may by resolution~~ require subdivision ~~plats~~ to conform to the provisions of the growth policy. ~~Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county~~ provided that the local subdivision regulations are amended to include substantial compliance with the specific goals and objectives of the growth policy as grounds for plat approval. The regulations must also demonstrate means by which the subdivider may show compliance with the growth policy.

(2) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by the growth policy may not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the growth policy. The city council has the final authority to approve the filing of a plat within the city limits.

(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1), a plat involving lands outside the corporate limits of the city and covered by a growth policy may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the growth policy. The board of county commissioners has the final authority to approve the filing of the plat.

(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).

(5) This section may not be interpreted to limit the present powers of city or county governments.

(6) The requirements of this section must be met before any plat may be filed of record or entitled to be recorded."

> Insert Amendment #8

Section 2. Section 76-3-604, MCA, is amended to read:

"**76-3-604. Review of preliminary plat.** (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms ~~to the local growth policy if one has been adopted pursuant to chapter 1,~~ to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter. The governing body may not deny or impose conditions on the approval of a plat based ~~SOLELY on a determination that the plat does not conform to the growth policy UNLESS THE LOCAL SUBDIVISION REGULATIONS INCLUDE SUBSTANTIAL COMPLIANCE WITH THE ADOPTED GROWTH POLICY AS GROUNDS FOR~~

~~APPROVAL OF THE PLAT.~~

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat."

~~NEW SECTION. Section 2. Repealer. Section 76-1-606, MCA, is repealed.~~

- END -

Insert Amendment #11

MONTANA SMART GROWTH COALITION

AERO
American Farmland Trust
Citizens for a Better Flathead
Clark Fork Coalition
Downtown Billings Partnership
Flathead Lakers
Flathead Resource Organization
Greater Yellowstone Coalition
Hwy 93 Citizens Coalition
Responsible Planning
HomeWORD
Montana Association of Conservation Districts
Montana Environmental Information Center
Montana Wildlife Federation
National Center for Appropriate Technology
Northern Plains Resource Council
Plan Helena
Smart Growth Missoula
Soil and Water Conservation Society-Montana Chapter
Wheeler Center
Women Voters for the Earth

PO Box 52
Helena, MT 59624
406-442-7252
406-442-7533
e-mail:
www.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3/23/01
BILL NO. HB 543

March 23, 2001

Chair Crismore and Senate Natural Resources Committee

RE: HB 543

Dear Chair Crismore and members of the committee:

Montana Smart Growth Coalition supports the following amendments to HB 543. We also understand the term "conform," used in the first amendment to MCA 76-1-606, to mean and be synonymous with the term "comply." LOOK IN AMENDMENT 6 THRU

1. Title, line 9 through line 10.
Strike: "UNLESS" on line 9 through "POLICY" on line 10
Insert: "REQUIRING THAT SUBDIVISION REGULATIONS CONFORM TO THE GROWTH POLICY WHEN A GROWTH POLICY HAS BEEN ADOPTED; REQUIRING A LOCAL GOVERNMENT THAT HAS ADOPTED A GROWTH POLICY TO ESTABLISH REQUIREMENTS TO IMPLEMENT APPLICABLE PROVISIONS OF THE GROWTH POLICY IN LOCAL SUBDIVISION REGULATIONS"
2. Title, line 11.
Following: "SECTIONS"
Insert: "76-1-605,"
Following: "76-1-606"
Insert: ", 76-3-504,"
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"
3. Page 1, line 21 through line 22.
Strike: "should" on line 21 through "policies" on line 22
4. Page 1.
Following: line 28
Insert: **"Section 1.** Section 76-1-605 , MCA, is amended to read:

"76-1-605. Use of adopted growth policy. After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

~~(3) adoption of subdivision controls;~~ and

~~(4)~~(3) adoption of zoning ordinances or resolutions."

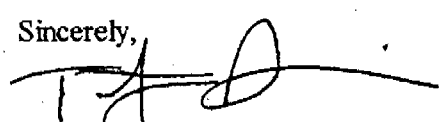
{*Internal References to 76-1-605: None.*}"
Renumber: subsequent sections
5. Page 2, line 1.
Strike: "subdivisions" through "(1)"
Insert: "subdivision regulations."
6. Page 2, line 2 through line 3.
Strike: "city" on line 2 through "require" on line 3
Strike: "plats" on line 3
Insert: "regulations adopted pursuant to chapter 3 of this title must be made"
Following: "policy"
Insert: "."
7. Page 2, line 5 through line 22.
Strike: line 5 through line 22 in their entirety
8. Page 2.
Following: line 22
Insert: "**Section 3.** Section 76-3-504 , MCA, is amended to read:

"**76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter must, at a minimum:

(11) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, establish requirements to implement the provisions of the growth policy that apply to this chapter."

{*Internal References to 76-3-504:*
x76-3-511 x76-3-511 }"
Renumber: subsequent sections
9. Page 2, line 26 through line 27.
Following: "conform" on line 26
Strike: "to" on line 26 through the first "," on line 27
10. Page 2, line 28 through page 3, line 1.
Strike: "The" on page 2, line 28 through "," on page 3, line 1
11. Page 3.
Following: line 8
Insert: "NEW SECTION. **Section 5. Transition -- applicability.** [Section 3 of this act], amending 76-3-504, applies to jurisdictions that adopted a growth policy pursuant to Title 76, chapter 1, before October 1, 2001, on October 1, 2003. A governing body that adopts a growth policy pursuant to Title 76, chapter 1, before October 1, 2001 shall establish requirements that conform to the growth policy and that implement the provisions of the growth policy that apply to this chapter on or before October 1, 2003 ."

Sincerely,



Tim Davis, Executive Director

MONTANA STATE SENATE

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3/23/01
BILL NO. HB 543

+++++ WITNESS STATEMENT +++++

NAME Janet Ellis

ADDRESS P.O. Box 595

HOME PHONE: _____ **WORK PHONE:** 443-3949

REPRESENTING Montana Audubon

APPEARING ON WHICH PROPOSAL ? HB 543

DO YOU: **SUPPORT** ✓ **OPPOSE** _____ **AMEND** ✓

COMMENTS:

We support HB 543 with Representative Brown's amendments. We understand that the term "conform" inserted in 76-1-606 MCA means "comply," so that the amendments require that subdivision regulations must "comply" with growth policies.

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE NATURAL RESOURCES
EXHIBIT NO. 6 7
DATE 3/23/01
BILL NO. HB 543

To: Senate Natural Resources
From: Marga Lincoln
220 Adams
Helena, MT 59601
Re: HB 543

I support HB 543 as it is to be amended. This will require subdivision approval to meet the specifications in local growth policies. As a citizen, I believe this is important. Here in Helena many citizens worked for several years on an advisory committee for the county's new growth policy. The county commission passed the growth policy, however, it did not pass an accompanying resolution stating that subdivision approval would be in keeping with the new policy. As a citizen, I believe this lacks integrity. If a community has agreed to certain values for the protection of local resources and has designated the areas of the community where growth should occur, then these principles and values should be consistent throughout the county's actions.

DATE 3/23/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 340, HB543, HB 495

[redacted]

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Guy V. Padgett	307-261-6550	US Dept. Interior Office of Surface Mining	495		
Peggy Trenk	443-4032	MT. Association of Realtors	340 543	X X	
J. K. KUZARA	406-323-2628	SELF	495	X	
JOHN DELANO			495	X	
Bjton Roberts	442-6063	MT. Building Ind Assn.	543	X	
Russ Ritter	449-6510	MRT	495	X	
MIKE MURPHY	235-4555	MWRA	HB340	X	
Joe Mueller	443-6023	Self	HB543	X	
Jim Mockler	442-6223	MT Ca/ Council	HB495	X	
Don Allen	443-5544	WTPA	HB 495 HB 543	X X	
LINDA STOLL	443-6055	MT ASSN OF PLANNERS	HB543	✓	
Stuart Doggett		MT Manufactured Housing & RV Assoc.	HB543	✓	
John Bloomquist		MT. Stockgrowers	HB340	—	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/23/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 340, HB 543, HB 495

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Byron Roberts	442-4474	MT Building Ind Assn	340	X	
Janet Ellis	443-3949	MT Audubon	HB543	W/Amendments X	
Anne Hedges	443-2520	MEIC	HB 543	X w/ amendments	
Gary Willis	449-4130	M.P.C.	H.B.340	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Closing by Sponsor:

REP. BALES declared that under the bill conservation districts would not be held liable if a grant were not given. He informed the committee he would find out if Tribal governments would be compensated.

(There is a lot of downtime on the tape while the committee finds their bills for executive action.)

EXECUTIVE ACTION ON HB 543

Motion: **SEN. TOOLE** moved that **AMENDMENTS HB054301.AMV EXHIBIT(nas68a01) BE ADOPTED.**

Discussion:

{Tape : 2; Side : A}

Ms Vandenbosch went through the amendments with the committee.

SEN. COCCHIARELLA asked for clarification on number 6. She asked if under the bill as amended who would enforce the subdivision regulations. **Ms Vandenbosch** informed her under current law, the governing body can adopt a resolution that says a subdivision has to adopt a growth policy. After that it is open for interpretation as to what that means. The bill as amended would say that the subdivisions themselves have to conform to the growth policy.

SEN. TASH asked for clarification regarding amendment number eight. **Ms Vandenbosch** stated that the sections were re-numbered. It had been checked to make sure it is in the right order.

SEN. COCCHIARELLA questioned if number eleven was worded correctly. **Ms Vandenbosch** declared that the second sentence is intended to explain the first. **SEN. COCCHIARELLA** asked if she could explain the need for the first sentence. **Ms Vandenbosch** stated it is important to say when the section applies.

Vote: **Motion carried 9-0.**

Motion: **SEN. COCCHIARELLA** moved that **HB 543 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. LORENTS GROSFIELD expressed his concern with page 2, lines 25-28. He questioned if the subdivider would comply with growth policy requirements. He stated it may be too strict. He wondered if it would be unacceptable to make the growth policy mandatory. He asked if the word "substantially" should be added to the language. **Ms Vandenbosch** argued adding the language would be outside of the title. If they changed that section they would change the rules of the chapter, rather than the rules of the growth policy. The section with the proposed amendments no longer deals with the growth policy.

SEN. COCCHIARELLA declared that the language makes sense. She stated that liberty is found in the growth policy. She argued the section is a process that comes from how liberal a local government makes their growth policy.

SEN. GROSFIELD stated the process is intense, long and controversial. If subdivision requirements have to conform to the provisions of the growth policy, people involved in the process will want the policy to be very detailed. He argued that is not the purpose of a growth policy. They are meant to be a guide.

Substitute Motion: **SEN. GROSFIELD** moved that on **P.2, LINE 3 TO INSERT THE WORD "SUBSTANTIALLY", BE ADOPTED.**

Discussion:

SEN. KEN TOOLE argued that the proposed language makes the section vague. He expressed his concern that people would become frustrated with the process.

SEN. COCCHIARELLA declared that predictability is important, the amendment would take that away.

SEN. GROSFIELD refuted the idea that a growth policy is zoning. The language moves towards making it a zoning document. He stated subdivision law should not be used to zone with, that is not its purpose.

Substitute Vote: **Motion failed 3-6 with Cocchiarella, Crismore, Grosfield voting aye.**

Vote: **BE CONCURRED IN AS AMENDED. Motion carried 9-0.**

{Tape : 2; Side : B}

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3/26/01
BILL NO. HB 543

Amendments to House Bill No. 543
3rd Reading Copy

Requested by Representative Roy Brown

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 23, 2001 (3:46PM)

1. Title, line 9 through line 10.
Strike: "UNLESS" on line 9 through "POLICY" on line 10
Insert: "; REQUIRING THAT SUBDIVISION REGULATIONS CONFORM TO THE GROWTH POLICY WHEN A GROWTH POLICY HAS BEEN ADOPTED; REQUIRING A LOCAL GOVERNMENT THAT HAS ADOPTED A GROWTH POLICY TO ESTABLISH REQUIREMENTS TO IMPLEMENT APPLICABLE PROVISIONS OF THE GROWTH POLICY IN LOCAL SUBDIVISION REGULATIONS"

2. Title, line 11.
Following: "SECTIONS"
Insert: "76-1-605,"
Following: "76-1-606"
Insert: ", 76-3-504,"
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 1, line 21 through line 22.
Strike: "should" on line 21 through "policies" on line 22

4. Page 1.
Following: line 28
Insert: **"Section 1.** Section 76-1-605, MCA, is amended to read:

"76-1-605. Use of adopted growth policy. After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

~~(3) adoption of subdivision controls; and~~

~~(4)~~(3) adoption of zoning ordinances or resolutions."

{Internal References to 76-1-605: None.}"

Renumber: subsequent sections

5. Page 2, line 1.
Strike: "subdivisions and plats"
Insert: "subdivision regulations"
Strike: "(1)"

6. Page 2, line 2 through line 3.
Strike: "city" on line 2 through "require" on line 3
Strike: "plats" on line 3
Insert: "regulations adopted pursuant to chapter 3 of this title must be made"
Following: "policy"
Insert: "."

7. Page 2, line 5 through line 22.
Strike: line 5 through line 22 in their entirety

8. Page 2.
Following: line 22
Insert: **"Section 3.** Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter must, at a minimum:

(1) except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality

under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(9) require the subdivider to establish ditch easements in the subdivision, in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots. Establishment of easements pursuant to this subsection (9) is not required if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(10) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

(11) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, establish requirements to implement the provisions of the growth policy that apply to this chapter within 2 years of adoption of the growth policy."

{*Internal References to 76-3-504:*
x76-3-511 x76-3-511 }*

Renumber: subsequent sections

9. Page 2, line 26 through line 27.
Following: "conforms" on line 26
Strike: "to" on line 26 through the first "," on line 27
Following: "this chapter" on line 27
Strike: ","

10. Page 2, line 28 through page 3, line 1.
Strike: "The" on page 2, line 28 through "." on page 3, line 1

11. Page 3.
Following: line 8
Insert: "NEW SECTION. **Section 5. Transition -- applicability.** [Section 3 of this act], amending 76-3-504, applies to jurisdictions that adopted a growth policy pursuant to Title 76, chapter 1, before October 1, 2001, beginning October 1, 2003. A governing body that adopts a growth policy pursuant to Title 76, chapter 1, before October 1, 2001, shall establish requirements that conform to the growth policy and that implement the provisions of the growth policy that apply to this chapter on or before October 1, 2003."

- END -